

**MEETING**

The regular meeting of the Hayward Planning Commission was called to order at 7:30 p.m. by Chairperson Bogue, followed by the Pledge of Allegiance.

**ROLL CALL**

Present: COMMISSIONERS Zermeño, McKillop, Sacks, Caveglia, Halliday, Thnay  
CHAIRPERSON Bogue  
Absent: COMMISSIONER None

Staff Members Present: Conneeley, Emura, Looney, Patenaude, Weisbrod

General Public Present: Approximately 35

**PUBLIC COMMENT****AGENDA**

1. Administrative Use Permit Application No. PL-2002-0440 – Jose L. and Olivia Rayas (Applicants/Owners) – Request to Keep and Fly Pigeons – The Property is Located at 25191 Kay Avenue in a RS (Single-Family Residential) District
2. Appeal of the Planning Director's Approval of Site Plan Review No. PL-2002-0358 – Dr. Ramon Reynoso (Appellant), Wade Rudnick – AT&T Wireless (Applicant), Willy Lim (Owner) – Request to Allow an Addition of Three Antennas and an Equipment Cabinet to an Existing Wireless Facility Site – The Property is Located at 586 West Tennyson Road in a CN (Neighborhood Commercial) District

**PUBLIC HEARINGS**

1. Administrative Use Permit Application No. PL-2002-0440 – Jose L. and Olivia Rayas (Applicants/Owners) – Request to Keep and Fly Pigeons – The Property is Located at 25191 Kay Avenue in a RS (Single-Family Residential) District

Consulting Project Planner Weisbrod described the area in which the applicant lives. He commented that it is a single-family residential district with a single-story, three-bedroom home on the property. The pigeon loft is located in the rear yard and is in compliance with the setback requirements for the Zoning Ordinance. It is small enough to be exempt from a building permit and appears very well maintained. The applicant has been raising and racing homing pigeons at this location for 10 years. Recently, Community Preservation staff received a complaint regarding this use. In order to keep pigeons, approval of an Administrative Use Permit would be required. He noted that staff had received two phone calls protesting the pigeons. The Southgate Homeowner's Association has gone on record opposing the

application. Staff cannot recommend approval of the permit unless the pigeons are kept in the loft at all times.

Commissioner Halliday asked about the legal definition of livestock and why homing pigeons are considered livestock.

Consulting Project Planner Weisbrod noted that the law specifically mentions pigeons as small livestock.

The public hearing was opened at 7:44 p.m.

Olivia Rayas, applicant, noted that the family cleans the pigeon loft once a day. She noted that they are let out in the morning, and then maintained inside the loft all day. She added that homing pigeons are thoroughbreds. The bands on the birds are registered with the American Racing Pigeon Association Club. From April to June, they are in competition, at which point about half the birds are let out twice a day. She commented that this is a sport in which all of their family takes a part. Because of these activities, they do not have time to participate in unlawful activities. She has had the homing pigeons for 10 years and explained why there is no public threat of or risk to humans. She noted the various diseases carried by other animals but not pigeons. She added that they are registered with the Civil Defense System and can be used in emergencies.

Commissioner Thnay asked why 100 pigeons.

Mrs. Rayas said that during flight they lose pigeons due to predators in the area. When they are let out, only half go at one time and the other half is used for breeding.

Commissioner Caveglia asked again why so many.

Mrs. Rayas stated they are used for both breeding and flying. They might have a total of thirty birds in a race at one time.

Commissioner Caveglia then asked staff about the Assembly Bill 3109, Chapter 329, and whether it might not limit the Commission's action.

Assistant City Attorney Conneeley explained that the law gives the City great latitude when determining public health, for example.

Commissioner Zermeño asked whether there were any other types of birds in the area.

Mrs. Rayas explained that there were a great number of other birds in the neighborhood from which droppings could come.

Commissioner Sacks complimented her on the presentation. She asked whether members of the organization all have their own pigeons.

Mrs. Rayas said they did and that there are 35 members in the Hayward Club.



Karen Clifton from the American Racing Pigeon Association commented that if birds were not well maintained, they would not do well in competition. One reason to have so many is so the owners can alternate the race participants. She added that the birds are vaccinated. She brought and showed a video from the Association.

Tim Perry, Pacific Zone director for the ARPA, discussed various ordinances in other Cities allowing homing pigeons.

Erica Reyes read a letter from another bird flyer, who expressed gratitude for the useful service of the birds in World War II.

Donald Rodriguez, Alameda, a 10-year member of the Hayward Homing Pigeon Club, explained that not all the members live in Hayward. He said hundred's of people keep pigeons in the area. He commented that for the policy to allow these birds, refer to the State law. He noted that in the opinion of the County Health Officer, this family is committed to keeping their property clean. He emphasized that the number of other birds in the area are the cause of bird droppings around the neighborhood. These birds are usually silent at night and make very little noise during the day. He said these birds are less an impingement on the neighbors than a large dog might be.

Matthew Delaine, a younger member of the homing pigeons club, said they are great fun. He said he takes responsibility for his own.

Anita and Carlos Perez, said they own the property next door to the Rayas and filed the complaint. Mrs. Perez said they were presenting the issues in the neighborhood. This number of pigeons does not belong in the neighborhood. These birds do land on the lines and roofs as well and that there is a lot of noise with the cleaning. She maintained that these birds do land on other peoples' properties, and corrode materials, etc. She mentioned other noise factors, which are annoying. She noted that they do not fly just once a day and wondered how you would keep the birds from eating before flight. She asked if it is just a pigeon issue, what about if people decided to start breeding rabbits and snakes. She stated that this is in a neighborhood where it does not belong. She added that she appreciated the South Gate Home Owner's Association agreeing this does not belong in their neighborhood.

Carlos Perez discussed the amount of droppings in the yard and on the cars. He added that this is a residential area, not a business or commercial district. Acid from the droppings does damage paint, and is unsanitary.

Commissioner Caveglia asked the Rayas, where the droppings go, from their cage cleaning.

Mrs. Rayas said they go into the garbage.

Commissioner Zermeño asked whether the droppings could be used for fertilizer.

Mrs. Rayas said some people have asked them for them, so occasionally they will give it away.

Commissioner Sacks asked about the use of the whistle.

Mrs. Rayas said they have foregone the use of the whistle and now clap to bring the birds back to the loft.

Commissioner Sacks asked about the number of pigeons on the wires near their home and said she assumed those pigeons on the wires are wild.

Mrs. Rayas agreed they must be.

Commissioner Caveglia said he was impressed with the number of people who supported allowing the pigeons to remain, both in the audience and on the petition.

Commissioner Halliday discussed the scraping noise of cleaning the cages and said she lives about a block away from the Rayas family, although she was allowed to vote. She commented that she did visit the applicant and see the pigeons fly off. She said while at their home, she saw the cleaning and the length of time for the scraping.

Mrs. Rayas said it takes approximately 15-20 minutes to clean the loft, once a day. She added that they would be willing to negotiate a time with the neighbors.

Commissioner Thnay asked Commissioner Halliday whether she sees the birds in the neighborhood.

Commissioner Halliday commented that she saw them flying around on her visit to the applicant, and probably had seen them before. However, she noted they have a large number of birds in that area.

Commissioner McKillop confirmed that the flying process takes about an hour.

Commissioner Zermeño clarified that no stray birds come to their home.

Mrs. Rayas noted that their birds are all banded.

The public hearing closed at 8:38 p.m.

Commissioner Halliday said she appreciated learning something new. She added that she usually would see lots of pigeons everyday so it was interesting to learn about this. Although this is an urban environment, there is much concern about individuals and living together in harmony. She commented that she was also impressed with the number of signatures on the petition, and noted that this neighborhood already has lots of birds and lots of droppings. This is a very well kept property. She noted that she would like to think we could learn to live together. She said she was particularly impressed with the children involved and attending the



meeting. She commented that she appreciates that there are differences in an urban setting. As to the concern regarding any health issues, she said there was not enough reason to deny the application. She then moved, seconded by Commissioner Zermeno, to approve the application, and ask staff to bring back findings and conditions to support this motion.

Commissioner Caveglia said his question was why the neighborhood association voted to deny the application.

Consulting Project Planner Weisbrod said he had received an email from the president on behalf of the Association regarding their concern that pigeons carry disease, lice and leave droppings.

Chairperson Bogue said he attended the South Gate Homeowners Association meeting and it was approved unanimously to send the letter explaining that this was not an appropriate use in the neighborhood. He said there are six Board members, and they all agreed to ask for a denial.

Commissioner Halliday commented that Roy Gordon, a member of the Board, was the person who called her and asked her to go over to the applicant's home. She commented that he was also a signatory on the petition in support of the Rayas as well.

Commissioner Caveglia noted that in 10-years no one really knew the homing pigeons were there. He added that the neighbors don't seem bothered by it, so he saw no reason not to agree with the motion.

Chairperson Bogue clarified that Mr. Gordon voted in support of sending the letter since he was one of the six people voting with the Board.

Commissioner Thnay said he would go along with what is being said. He thought trained pigeons could not be as bad as ducks, with which he would have more of an issue. He noted that one of the homing pigeon supporters said that other cities have crafted ordinances. He then suggested that perhaps staff should look at these other ordinances. He suggested that both staff and members need to come up with things to protect the rights of the individuals in a neighborhood.

Commissioner Zermeno agreed that looking at an ordinance is a good idea. He said he would favor the motion. He said he also was impressed with the involvement of so many young people in the community and suggested this might be a good way to get along with their neighbors.

Commissioner McKillop commented that the presentations were wonderful, and that it was good to see so many children involved and attending the meeting. She said it would be hard not to find that this is desirable for the public welfare.

Commissioner Sacks added her thanks for the presentation. She said this had been a wonderful learning experience. She added that she would support this motion, although normally, she would have an inherent problem with approving things that are not technically correct. She added that there are no health concerns.

Chairperson Bogue said he would be voting against the motion. He noted that the Homeowners Association agreed that there were problems with pigeons, and that many of the neighbors have been suffering in silence. He did not find that this application was appropriate.

Commissioner Thnay asked for staff to come back with recommendations as to what is the threshold for an acceptable number of pigeons. Findings on this should be brought back to the Commission at a later date.

Commissioner Halliday said she had thought about the comment that this might be setting a precedent for all sorts of breeders. However, she reminded members that each would require applying for a use permit and having a public hearing. So, she added, the City of Hayward does have a mechanism to keep it from getting out of hand.

The motion passed 6:1, with Chairperson Bogue voting "No."

2. Appeal of the Planning Director's Approval of Site Plan Review No. PL-2002-0358 – Dr. Ramon Reynoso (Appellant), Wade Rudnick – AT&T Wireless (Applicant), Willy Lim (Owner) – Request to Allow an Addition of Three Antennas and an Equipment Cabinet to an Existing Wireless Facility Site – The Property is Located at 586 West Tennyson Road in a CN (Neighborhood Commercial) District

Associate Planner Emura described the existing antennas and the replacement proposal. He said the appeal was based on noise and radio waves danger. He noted that Cingular Wireless has obtained an administrative use permit for the property. AT&T is willing to relocate the new cabinet outside of the patio area. He added that staff was proposing new conditions to include requiring the new cabinet equipment outside of the patio area, and location of the new equipment be approved by the Planning Director.

Principal Planner Patenaude suggested that it would probably be the most logical to locate the new AT&T cabinet next to the Cingular Wireless cabinet.

Commissioner Sacks asked for further information regarding the surrounding property.

Associate Planner Emura said it is to become residential-commercial development on the left.

Commissioner Zermeño asked where the AT&T antenna and the equipment were to be placed.

Associate Planner Emura said outside the patio area. As of yet, no location has been proposed to staff. He added that AT&T would like to keep the existing cabinet in the patio area.

Principal Planner Patenaude indicated that it would make sense to keep them all together.



Chairperson Bogue asked whether they would replace the old antennas.

Associate Planner Emura said they would keep existing equipment cabinets in the patio area and remove the existing antennas.

The public hearing was opened at 9:06 p.m.

Ramon Reynoso the appellant said the issue is to have this cabinet removed and placed to the back. He said he has been at this location 13 years and the noise level from the cabinet makes it impossible to keep his windows open. He added that a number of the tenants have already moved although he could not say it was because of the noise from the units. He indicated that it is like having an air conditioner next to his desk. He proposed having all of the equipment cabinets placed in the back. He said his appeal was to ask to have them all removed and placed in the back, outside the patio.

Commissioner Sacks confirmed that he had been a tenant at this location for 13 years and asked whether he had been notified of the application.

Associate Planner Emura said staff had sent only one card for the three tenants, and the initial public notice went to another tenant. The second public notice went to Mr. Reynoso.

Robert McCarthy, for ATT, said they have indicated that they have no objection to the second equipment cabinet being relocated; there should be no impact on cell service. Relocating the wireless facility to Cingular's redwood trees is prohibitive. He noted that for them to have to pay the expense of sharing the Redwood tree would be expensive. He added that the antennas are part of an integrated system. They need a certain height not to bleed into another section. He noted that they use a residential air-conditioning unit to cool the system but have made note of the complaint and added a baffle to the unit to make less noise. He noted that the cabinets have very expensive equipment in them so they would like the cabinets inside of the patio.

Commissioner Caveglia commented that these antenna seem lower than those in previous applications.

Mr. McCarthy described the antennas as built to be directional to the horizon. He then went into great detail as to how the antennas function.

Chairperson Bogue commented that the building is low so Mr. Reynoso is close to the antennas when he is in his space. He asked whether there is any shielding from the rays.

Bill Hammond, engineer for AT&T described the measurements of exposure. He commented that shielding would have very little effect, since the antennas are directional.

The public hearing closed at 9:29 p.m.

Commissioner Zermeño moved the staff recommendation to approve the findings, deny the appeal and move the existing and new cabinet outside. The motion died for lack of a second.

Commissioner Sacks asked for a clarification as to what staff was recommending for the additional conditions.

Associate Planner clarified that staff wanted the addition of a modification with the new cabinet outside the patio with the other equipment.

Commissioner Sacks commented that graffiti could create a problem and the cabinet could be an attractive nuisance. She said she tended to be in favor of recommendation as written and received. She then moved, seconded by Commissioner Halliday, to find the proposed project categorically exempt from CEQA, and deny the appeal and approve the Site Plan Review application, subject to the original findings and conditions. as written.

Commissioner Sacks clarified that this cabinet would then be combined with the existing cabinet and as originally presented to the Commission, without the subsequent staff recommendations.

Commissioner Thnay asked for further clarification whether the motion included staff's recommendation to move the cabinets to the same location.

Commissioner Sacks said she preferred the new cabinet to be with the existing cabinet subject to the original report and conditions. She said she was asking to take the Cingular application out of the whole equation. Just separate the two. She added that this project would have the new equipment cabinet placed inside the patio area next the original equipment.

Commissioner Zermeño asked whether the cabinets could be placed on the roof.

Principal Planner Patenaude said they could be, but it would add substantial costs to the project. He indicated again that staff was proposing to consolidate the equipment rather than spread them out.

Commissioner Zermeño said he would vote against the motion.

Chairperson Bogue noted that by placing the antennas on the roof, they would not be totally screened.

Principal Planner Patenaude agreed that the parapet does not extend around the building to add coverage.

Commissioner Thnay suggested there was a reason to combine the new cabinet with the other since the advantage would be in not adding more noise to the building. Balance the issue, combining and co-locating is a good thing.





Commissioner Sacks said the equity issue is equally important. One of the companies should not be paying for the other company.

The motion carried by the following vote:

AYES:	COMMISSIONERS Halliday, Sacks, Zermeno
	CHAIRPERSON Bogue
NOES:	COMMISSIONER Thnay, Caveglia, McKillop
ABSENT:	None
ABSTAIN:	None

#### ADDITIONAL MATTERS

##### 3. Oral Report on Planning and Zoning Matters

Principal Planner Patenaude informed members of the time and place of the upcoming holiday dinner.

##### 4. Commissioners' Announcements, Referrals

Commissioner Sacks discussed art in the downtown renewal area, and commented on various projects she has visited, including those in downtown Oakland and Santa Clara. She suggested the need to be more aware of what other cities are doing with the concept of downtown housing. She then asked how the "lofts" project was going.

Principal Planner Patenaude responded that the project had been sold to a new developer.

Commissioner McKillop asked for consideration of directional markings on the maps received with reports.

Commissioner Caveglia asked, once again, if any further information was available regarding Hutch's Car Wash and the huge service tent on the property.

Principal Planner Patenaude said, he thought Planning Manager Anderly had been checking into this issue but he did not know the outcome.

Commissioner Halliday followed up on Commissioner McKillop's request to ask whether major streets might also be added to the maps and reports. She noted a news article in the SF Chronicle dealing with "Smart Growth," and commented that voters seem to be more supportive of higher density projects.

## APPROVAL OF MINUTES

- October 10, 2002 - Approved
- October 17, 2002 - Approved

## ADJOURNMENT

The meeting was adjourned by Chairperson Bogue at 9:53 P.M.

## APPROVED:

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Barbara Sacks, Secretary  
Planning Commission

## ATTEST:

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Edith Looney  
Commission Secretary